

Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph

(a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of OPM, or his or her designee, or by the Director General of the Foreign Service, or his or her designee, as applicable.

**§ 735.203 What are the restrictions on conduct prejudicial to the Government?**

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

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**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Part 1794**

**RIN 0572-AB73**

**Environmental Policies and Procedures**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on a greater use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

**DATES:** Written comments must be received by RUS or bear a postmark or equivalent, no later than February 14, 2003.

**ADDRESSES:** Written comments should be sent to F. Lamont Heppie, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities

Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:**

Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250-1571. Telephone (202) 720-1784. E-mail address: [lwolfe@rus.usda.gov](mailto:lwolfe@rus.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12372**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which requires consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guaranties were not covered by Executive Order 12372.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

**Regulatory Flexibility Act Certification**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this proposed rule, if adopted, would not have significant impact on a substantial number of small entities. The proposed rule would serve to clarify the existing regulation and to

change the existing classification of selected minor actions to generally streamline the environmental review process for such actions. Most of the proposed changes in the proposed rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

**Information Collection and Recordkeeping Requirements**

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0117 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments of the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

**National Environmental Policy Act Certification**

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

**Program Affected**

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

**Background**

On December 11, 1998, the Rural Utilities Service (RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (63 FR 68648) covering the actions of the electric, telecommunications, and water and waste programs. Based on a greater emphasis within the electric industry on the use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has

determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

This proposed rule contains a variety of changes from the provisions of the current rule. Most of these revisions are minor or merely intended to clarify existing RUS policy and procedure and to ensure that procedures are consistent among the three RUS programs. Other revisions expand upon the existing types of actions that are subject to environmental review or reclassify actions within categories.

Within subpart A, the term "distributed generation" has been added to the list of definitions and the term "Environmental Analysis (EVAL)" has been deleted from the list of definitions in § 1794.6. A fourth bulletin was issued in early 2002 that provides guidance in preparing for and carrying out scoping for electric generation and transmission projects that require either an environmental assessment with scoping or an environmental impact statement. Further information on the four RUS guidance bulletins is provided in § 1794.7.

Within subpart B, language clarifying RUS policy regarding the completion of RUS environmental review process for certain categories of actions has been added to § 1794.14(a).

Within subpart C, a number of additional listings to the existing classification and changes to selected listings within the existing classification are being proposed. These proposed reclassifications involve minor actions proposed by applicants, which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within § 1794.21(a), RUS proposes to add separate categories for generating facilities of less than 100 kilowatts and the co-firing of bio-fuels and refuse derived fuels at existing fossil-fueled generating stations. Within § 1794.22(a), RUS proposes to modify the capacity thresholds for distributed generation facilities at existing sites. Two new categories of proposals involving natural gas pipelines and combined cycle facilities at existing sites would be added to § 1794.22(a).

In addition to including fuel cell and combined cycle generation in the same listings as combustion turbines, RUS proposes to add three new categories of

proposals within § 1794.23. Proposed length and capacity threshold changes within § 1794.23, reflect changes that would be made in § 1794.22(a). Within §§ 1794.24 and 1794.25 the only proposed change would include fuel cell and combined cycle generation in the same listing as combustion turbines.

RUS proposes to modify its procedures in subparts E through G of this part. In §§ 1794.43 and 1794.44, RUS would eliminate the requirement to publish in the **Federal Register**, notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) availability for electric and telecommunications proposed actions described in § 1794.23. RUS has determined that no appreciable benefit has resulted from publishing a separate **Federal Register** notice for proposals in that category. By this change the notice requirements for all three programs would be consistent for all EA proposals described in § 1794.23. Electric proposals described in § 1794.24 would still be subject to this requirement.

RUS would modify its policy regarding the use of a contractor prepared Environmental Impact Statement (EIS). Under the existing regulation, the EIS would either be developed by RUS from an applicant prepared Environmental Analysis (EVAL) or prepared with the assistance of a consultant selected by RUS. Based on its experience in recent years, RUS expects to utilize the services of a consultant selected by and working for RUS for all actions requiring the preparation of an EIS. RUS does not contemplate preparing a draft or final EIS relying on an applicant prepared EVAL, as currently stated in § 1794.61(b). Therefore, RUS proposes to delete § 1794.61(b). Also, the applicant submitted document for all proposals will be titled an environmental report (ER). Previously, the applicant supplied document for a § 1794.24 proposal was an EVAL. These proposed changes would affect §§ 1794.50, 1794.52 through 1794.54, and 1794.61.

#### List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended by revising part 1794 to read as follows:

## PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

1. The authority citation for part 1794 continues to read as follows:

**Authority:** 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

2. Section 1794.6 is amended by:

A. Removing the definition for "Environmental Analysis (EVAL)";

B. Adding the definition for "Distributed Generation", and

C. Amending the definition for "Environmental Report (ER)" by revising the first sentence.

These amendments are to read as follows:

#### § 1794.6 Definitions.

\* \* \* \* \*

*Environmental Report (ER).* The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 through 1794.24. \* \* \*

\* \* \* \* \*

*Distributed Generation.* The generation of electricity by a sufficiently small electric generating system as to allow interconnection of the system near the point of service at distribution voltages or customer voltages. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources.

\* \* \* \* \*

3. Section 1794.7(a) is revised to read as follows:

#### § 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1724A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) and (c)); and RUS Bulletin 1794A–603 provides guidance in conducting scoping for proposed actions classified as requiring an EA with scoping or an EIS. Copies of these bulletins are available upon request by contacting the Rural Utilities Service, Publications Office, Program Development and Regulatory Analysis, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

\* \* \* \* \*

4. Section 1794.15(a) is amended by adding new paragraphs (a)(1), (a)(2), and (a)(3), to read as follows:

**§ 1794.15 Limitations on actions during the NEPA process.**

(a) \* \* \*

(1) A categorical exclusion determination has been made for proposals listed under §§ 1794.21 and 1794.22.

(2) Applicant notices announcing the RUS FONSI determination have been published for proposals listed under §§ 1794.23 and 1794.24.

(3) Applicant notices announcing the RUS Record of Decision have been published for proposals listed under § 1794.25.

\* \* \* \* \*

5. Section 1794.21 is amended by adding new paragraphs (b)(25) and (26) to read as follows:

**§ 1794.21 Categorically excluded proposals without an ER.**

\* \* \* \* \*

(b) \* \* \*

(25) Electric generating facilities of less than 100 kilowatts at any one site for the purpose of providing limited service to customers or facilities such as stock tanks and irrigation pumps.

(26) New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels. A description of the facilities to be constructed shall be provided to RUS.

\* \* \* \* \*

6. Section 1794.22 is amended by revising paragraphs (a)(8) and (9) and by adding new paragraphs (a)(12) and (13) to read as follows:

**§ 1794.22 Categorically excluded proposals requiring an ER.**

(a) \* \* \*

(8) Construction of distributed generation totaling 10 MW or less at an existing utility, industrial, commercial or educational facility site. There is no capacity limit for a generating facility located at or adjacent to an existing landfill site that is powered by refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Installation of new generating units or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

\* \* \* \* \*

(12) Installing a heat recovery steam generator and steam turbine with a rating of 200 MW or less on an existing

combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the ER.

(13) Construction of a natural gas pipeline (ten miles or less in length) to serve an existing gas-fueled generating facility.

\* \* \* \* \*

7. Section 1794.23 is amended by:

A. Revising paragraphs (c)(1), (c)(2), and (c)(3), and

B. Adding new paragraphs (c)(12) and (c)(13)

This revision and additions are to read as follows:

**§ 1794.23 Proposals normally requiring an EA.**

\* \* \* \* \*

(c) \* \* \*

(1) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facility of 20 MW (nameplate rating) or less, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

\* \* \* \* \*

(12) Installing a heat recovery steam generator and steam turbine with a rating of more than 200 MW on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the EA.

(13) Construction of a natural gas pipeline (more than ten miles in length) to serve an existing gas-fueled generating facility.

8. Section 1794.24(b)(2) is revised to read as follows:

**§ 1794.24 Proposals normally requiring an EA with scoping.**

\* \* \* \* \*

(b) \* \* \*

(2) Construction of fuel cell, combustion turbine, combined cycle, and diesel generating facilities of more

than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 20 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

\* \* \* \* \*

9. Section 1794.25(a)(1) is revised to read as follows:

**§ 1794.25 Proposals normally requiring an EIS.**

\* \* \* \* \*

(a) \* \* \*

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than fuel cell, combustion turbine, combined cycle, or diesel generators. All new associated facilities and related electric power lines shall be covered in the EIS; and

\* \* \* \* \*

**§ 1794.43 [Amended]**

10. Amend § 1794.43 by:

A. Removing paragraph (b), and

B. Amending paragraph (a) by removing the paragraph designation and the heading "General".

11. Section 1794.44 is revised to read as follows:

**§ 1794.44 Timing of agency action.**

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

12. Section 1794.50 is revised to read as follows:

**§ 1794.50 Normal sequence.**

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at where project scoping has been completed. Following project scoping, RUS will make a judgment to have an EA prepared or contract for the preparation of an EIS.

13. Section 1794.51(a) is revised to read as follows:

**§ 1794.51 Preparation for scoping.**

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS and schedule scoping meetings (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

\* \* \* \* \*

14. Section 1794.52(d) is amended by removing the last sentence and adding a new sentence at the end of the paragraph to read as follows:

**§ 1794.52 Scoping meetings.**

\* \* \* \* \*

(d) \* \* \* The applicant or its consultant shall prepare a record of the scoping meeting. The record shall consist of a transcript when a traditional meeting format is used or a summary report when an open house format is used.

\* \* \* \* \*

15. Section 1794.53 is revised to read as follows:

**§ 1794.53 Environmental report.**

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an ER. The ER shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The applicant's ER will normally serve as the RUS EA. After RUS has reviewed and found the ER to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the ER to satisfy the RUS distribution plan.

(c) The ER shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information, and shall be incorporated by summary or reference into the FONSI.

16. Section 1794.54 is revised to read as follows:

**§ 1794.54 Agency determination.**

Following the scoping process and the development of a satisfactory ER by the applicant or its consultant that will serve as the agency's EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this

part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44, except that RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

**§ 1794.61 [Amended]**

17. Section 1794.61 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (a) as the introductory text; paragraph (a)(1) as (a); paragraph (a)(2) as (b); and paragraph (a)(3) as (c).

Dated: December 24, 2002.

**Blaine D. Stockton,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 03-713 Filed 1-14-03; 8:45 am]

**BILLING CODE 3410-15-P**

**DEPARTMENT OF DEFENSE****Department of the Army, Corps of Engineers****33 CFR Part 328****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401**

[FRL-7439-8]

RIN 2040-AB74

**Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States"**

**AGENCIES:** U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are today issuing an advance notice of proposed rulemaking (ANPRM) in order to obtain early comment on issues associated with the scope of waters that are subject to the Clean Water Act (CWA), in light of the U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*).

Today's ANPRM requests public input on issues associated with the definition of "waters of the United States" and also solicits information or data from the general public, the scientific community, and Federal and

State resource agencies on the implications of the *SWANCC* decision for jurisdictional decisions under the CWA. The goal of the agencies is to develop proposed regulations that will further the public interest by clarifying what waters are subject to CWA jurisdiction and affording full protection to these waters through an appropriate focus of Federal and State resources consistent with the CWA. The input received from the public in response to today's ANPRM will be used by the agencies to determine the issues to be addressed and the substantive approach for a future proposed rulemaking addressing the scope of CWA jurisdiction.

Pending this rulemaking, should questions arise, the regulated community should seek assistance from the Corps and EPA, in accordance with the joint memorandum attached as Appendix A.

**DATES:** In order to be considered, comments or information in response to this ANPRM must be postmarked or e-mailed on or before March 3, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Mail comments to: Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW-2002-0050.

**FOR FURTHER INFORMATION CONTACT:** For information on this ANPRM, contact either Donna Downing, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue N.W., Washington, DC 20460, phone: (202) 566-1366, e-mail: [CWAwaters@epa.gov](mailto:CWAwaters@epa.gov), or Ted Rugiel, U.S. Army Corps of Engineers, ATTN CECW-OR, 441 G Street NW., Washington, DC 20314-1000, phone: (202) 761-4595, e-mail: [Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL](mailto:Thaddeus.J.Rugiel@HQ02.USACE.ARMY.MIL).

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Potentially Regulated Entities**

Persons or entities that discharge pollutants (including dredged or fill material) to "waters of the U.S." could be regulated by a rulemaking based on this ANPRM. The CWA generally prohibits the discharge of pollutants into "waters of the U.S." without a permit issued by EPA or a State or Tribe approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved